Recommendation of the Consumer Services Division
C.99-12-029/ C.00-02-027

I. CASE SUMMARY

The Commission has requested that the Consumer Services Division (CSD) determine, based on documents submitted to CSD by Pacific Bell and AT&T as ordered by Commission decision D.01-02-017, whether the complaints filed by Pacific Bell against AT&T (C.00-02-027) and by AT&T against Pacific Bell (C.99-12-029) should be dismissed. Essentially, the issue CSD has been ordered to address is whether the slamming allegations made by AT&T and Pacific Bell have merit, and also whether Pacific Bell's billing system improperly billed AT&T for unauthorized changes in service provider under Pacific Bell's "winback" program, when in fact the consumer authorized the change. (D.01-02-017)

II. RECOMMENDATION

CSD recommends that the Commission not dismiss AT&T and Pacific Bell's formal complaints (C.99-12-029 and C.00-02-027). CSD bases its recommendation on the results of interviews that its staff conducted with 75 California consumers whom Pacific Bell identified as having claimed that the switch of their local toll telephone service to AT&T was not authorized.

Twenty-five of the 75 consumers interviewed told CSD staff that their local toll service had been switched to AT&T without their authorization. This finding demonstrates that AT&T slammed[1] these consumers in violation of Public Utilities Code section 2889.5[2].

[1] Slamming is a practice in which a consumer's local, local toll or long-distance service provider is switched without the consumer's authorization.

[2] All statutory references herein are to the California Public Utilities Code.

Eleven of the 75 consumers interviewed said that they had authorized the switch of their local toll service to AT&T. These consumers were improperly identified by Pacific Bell as LPIC disputes. This demonstrates Pacific Bell's billing system improperly billed AT&T for consumers that legitimately switched to AT&T and then returned to Pacific Bell under Pacific Bell's "winback" program. When Pacific Bell classifies a switch to AT&T's local toll telephone service as an intraLATA[3] (also referred to as LPIC - Local Primary Interexchange Carrier) dispute, Pacific Bell uses coding in its billing system that causes AT&T to be charged for two LPIC change charges for each telephone line affected, once for the allegedly improper switch and once to return the consumer to his or her carrier of choice. If a consumer in fact authorized the switch to AT&T's local toll service, these charges are improper.

Thirty-nine of the 75 consumers interviewed stated that they could not recall anything about switching their service provider, or that no switch had occurred. This may demonstrate inaccuracies in Pacific Bell's coding of complaints in its billing system, or it may reflect that consumers forget or become confused over time (these were complaints registered in 1999).

CSD staff also discovered that in 1999, both AT&T and Pacific Bell did not at all times comply with the independent third party verification (TPV) requirements of section 2889.5. In some cases AT&T did not record the third party verification of consumers switching to AT&T's local toll telephone service. In some cases Pacific Bell did not use independent third party verification when switching legitimate AT&T customers back to Pacific Bell's local toll telephone service, after Pacific Bell improperly identified them as LPIC disputes.

Based on the preliminary investigative finding that Pacific Bell's billing system improperly reported legitimate consumer switches to AT&T as intraLATA PIC disputes,

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[3] "IntraLATA" means within or inside a Local Access Transport Area (LATA). LATAs were created after the breakup of the Bell System. They are also known as service areas, or local toll calling areas. California is divided into 11 LATAs.

CSD recommends that the Commission retain the services of an outside auditor, to be paid for by reimbursement of the Commission's costs by Pacific Bell, to provide a detailed report regarding the accuracy of Pacific Bell's process for tracking and billing of intraLATA PIC disputes, currently and for 1999-2000. The contractor will work closely with CSD staff, which will select the firm, direct the casework, and maintain oversight of project goals. CSD staff will oversee completion of the audit, including review of project materials, review of any evidence of slamming violations, and preparation of data requests.

III. BACKGROUND

On December 21, 1999 and February 16, 2000, respectively, AT&T and Pacific Bell filed formal complaints (C.99-12-029 and C.00-02-027) against each other with the California Public Utilities Commission. The parties' complaints alleged that the other had changed the intraLATA telephone service of California consumers without the consumers' authorization. The parties later requested their complaints be dismissed.

On February 8, 2001, the Commission issued Interim Opinion D.01-02-017. In Ordering Paragraph Number 3 of the opinion the Commission directed CSD staff to file a report by August 7, 2001, addressing the issues identified in the Scoping Memo and:

- Recommend whether the complaints be dismissed,
- Determine if either Pacific Bell or AT&T has slammed California consumers with regard to intraLATA toll service,
- Determine if Pacific Bell's billing system is improperly billing AT&T for consumers that legitimately switched to AT&T and then returned to Pacific Bell under Pacific Bell's "winback"[4] program, and
- Ensure that the proceeding resolves all ongoing disputed charges encompassed by the foregoing issues.

[4] Pacific Bell's Winback Program is Pacific Bell's marketing effort to have California consumers return to its local toll service.

A. INTERVIEWS CONDUCTED BY CSD STAFF

CSD selected a random sample of 128 LPIC dispute consumers (these consumers were identified by Pacific Bell as having lodged LPIC disputes against AT&T) and completed interviews with 75 these consumers. Twenty-five of these consumers told CSD that their local toll service had been switched to AT&T without their authorization. Eleven consumers told CSD that they had authorized the switch of their local toll service to AT&T. Thirty-nine of these consumers stated that they could not recall anything about switching their service provider, or that no switch had occurred.

CSD Investigator Richard C. Mariscalco interviewed 13 consumers identified by Pacific Bell as having lodged LPIC disputes against AT&T. Ten of these interviews were with business consumers and 3 were with residential consumers. Six of these consumers (all business consumers) stated that their local toll telephone service had been switched to AT&T without their authorization. Six of these consumers stated that they did not remember any problems with their local toll telephone service. One consumer could not recall the details of the problem she had with her local toll telephone service.

CSD's Stephen B. Northrop also interviewed 62 consumers identified by Pacific Bell as having lodged LPIC disputes against AT&T. Fifty-four of these interviews were with residential consumers and 8 of these interviews were with business consumers. Nineteen consumers said their local toll service was switched to AT&T without their authorization; 11 consumers said they authorized the switch to AT&T's local toll service; 23 consumers stated that they did not know anything about a switch to AT&T's local toll service or did not recall anything about a switch; and 9 consumers stated that a switch to AT&T's local toll service never happened.

B. AT&T SMALL BUSINESS SURVEY

AT&T presented CSD with the results of a survey that it conducted of 319 small businesses. Pacific Bell charged AT&T PIC change fees for these businesses because Pacific Bell reported that these businesses claimed that the change of their local toll service to AT&T was not authorized. AT&T stated it contacted 143 out of the 319 businesses, and was able to obtain information from 125 of the businesses. AT&T stated that 25 of the businesses stated they had authorized the change of their local toll service to AT&T and that 11 of the businesses stated that they had not authorized the change of their local toll service to AT&T. The results are summarized below:

- 25 (20%) businesses authorized the change to AT&T's local toll service,
- 11 (9%) businesses claimed the switch to AT&T's intraLATA service was unauthorized,
- 38 (30%) businesses misunderstood what intraLATA was (local versus local toll),
- 18 (14%) businesses changed their mind,
- 13 (10%) businesses were won back by Pacific Bell,
- 20 (16%) businesses supplied other varied reasons.

C. Background of InterLATA and IntraLATA PIC Changes and Disputes

Incumbent Local Exchange Carriers (ILECs) such as Pacific Bell perform presubscription changes to its subscribers' interLATA (long distance) and intraLATA (local toll) telephone service. Pacific Bell tracks and records PIC (Primary Interexchange Carrier, or long distance carrier) and LPIC (Local Primary Interexchange Carrier, or local toll carrier) disputes. A PIC dispute is a PIC change that the telephone subscriber alleges was not authorized.

An LPIC dispute is an LPIC change that the telephone subscriber alleges was not authorized. IntraLATA PIC change and LPIC change are essentially interchangeable terms. PIC and LPIC changes are made by ILECs at the request of a subscriber or a long-distance telephone company. PIC and LPIC changes are "customer-initiated" if a subscriber is switched to AT&T's service, for example, at the subscriber's request (e.g. by the subscriber calling Pacific Bell or another ILEC). PIC and LPIC changes are "carrier-initiated" if the subscriber is switched to AT&T at AT&T's request (e.g. AT&T electronically submits to Pacific Bell, or another ILEC, a list of subscribers' telephone numbers to be switched to AT&T service). From the information about PIC and LPIC changes and PIC and LPIC disputes that Pacific Bell receives, it produces reports entitled

"Pacific InterLATA Subscription Activity Report" and "Pacific IntraLATA Subscription Activity Report". These reports are produced monthly and list the number of business, coin telephone and residential PIC and LPIC changes (carrier-initiated as well as customer-initiated) for each telephone company that provides interLATA and intraLATA telephone service in Pacific Bell's territory. The reports also list the number of PIC and LPIC disputes by businesses, coin telephone owners and residences that Pacific Bell received in that month against the various telephone companies. On January 1, 2001, Pacific Bell combined the information about PIC and LPIC changes and disputes onto one report and titled the new report "Pacific Inter/Intra LATA Subscription Activity Report."

The typical process by which PIC and LPIC disputes were recorded by Pacific Bell against AT&T was as follows:

- The subscriber called Pacific Bell to inform them that the change in their local toll or long distance telephone service to AT&T was done without authorization.
- Pacific Bell examined its records and determined that the subscriber was switched to AT&T's local toll or long distance telephone service at AT&T's request.
- Pacific Bell switched the subscriber back to his or her previous carrier, notified AT&T of the allegation of slamming, and billed AT&T for an unauthorized PIC or LPIC change.[5]

D. AT&T'S IntraLATA PIC Disputes as Reported by Pacific Bell

Pacific Bell supplies CSD with reports that it compiles of the interLATA PIC and intraLATA PIC disputes that it receives from California consumers about other telephone companies. The following tables contain AT&T's intraLATA PIC disputes as reported by Pacific Bell to CSD, for the periods of May 1999 through December 1999; January 2000 through December 2000; and January 2001 through June 2001.

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[5] Pacific Bell currently charges AT&T $9.94 for each LPIC and PIC dispute; other LECs charge different amounts.

AT&T's May 1999 through December 1999 IntraLATA PIC Disputes

Combined Bus. & Res.	LPIC Changes	LPIC Disputes	LPIC Dispute %
May-99	84,564	1,929	2.28%
Jun-99	213,379	14,582	6.83%
Jul-99	231,649	29,911	12.91%
Aug-99	202,329	25,395	12.55%
Sep-99	156,101	13,161	8.43%
Oct-99	138,922	11,383	8.19%
Nov-99	121,127	7,187	5.93%
Dec-99	108,039	6,991	6.47%
TOTALS	1,256,110	110,539	8.80%

AT&T's 2000 IntraLATA PIC Disputes

Combined Bus. & Res.	LPIC Changes	LPIC Disputes	LPIC Dispute %
Jan-00	94,806	6,419	6.77%
Feb-00	89,671	6,165	6.88%
Mar-00	111,193	8,375	7.53%
Apr-00	100,562	7,759	7.72%
May-00	94,950	8,539	8.99%
Jun-00	95,858	8,895	9.28%
Jul-00	92,412	9,259	10.02%
Aug-00	99,343	8,867	8.93%
Sep-00	101,450	9,321	9.19%
Oct-00	103,459	12,108	11.70%
Nov-00	93,347	12,102	12.96%
Dec-00	76,963	10,242	13.31%
TOTALS	1,154,014	108,051	9.36%

AT&T's January 2001 through June 2001 IntraLATA PIC Disputes

Combined Bus. & Res.	LPIC Changes	LPIC Disputes	LPIC Dispute %
Jan-01	87,695	9,126	10.41%
Feb-01	87,793	10,231	11.65%
Mar-01	103,371	12,744	12.33%
Apr-01	88,003	10,148	11.53%
May-01	86,635	10,848	12.52%
Jun-01	84,713	7,939	9.37%
TOTALS	538,210	61,036	11.34%

E. AT&T's InterLATA and IntraLATA PIC Disputes from Pacific Bell, Verizon and National Totals

A matrix provided by AT&T shows that AT&T's intraLATA PIC dispute ratio ranges from 4.67% to 12.34% in Pacific Bell's territory for June 1999 to October 1999. AT&T's intraLATA PIC dispute rate in Verizon's territory is 0.04% to 0.08%. AT&T's national intraLATA PIC dispute rate is .47% to 3.31%. AT&T states in its filed complaint that its marketing efforts for interLATA and intraLATA and verifications processes were identical in Pacific Bell's territory as compared to Verizon's and for the nation as a whole, and thus AT&T argues that its LPIC dispute numbers should not differ from one LEC's territory to another. AT&T's LPIC dispute rates in Pacific Bell's territory are 117 times (4.67%/0.04%) to 154 times higher (12.34%/0.08%) when compared to the LPIC dispute figures in Verizon's territory. AT&T's LPIC dispute rates in Pacific Bell's territory are 3.7 times (12.34%/3.31%) to 9.9 times higher (4.67%/.47%) when compared to AT&T's nationwide LPIC dispute figures.

A table entitled "Business Data for Pacific Bell & GTE-CA" provided by AT&T shows that AT&T's percentage of intraLATA PIC disputes to the number of confirmed intraLATA changes with Pacific Bell was many times higher than AT&T's percentage of intraLATA PIC disputes to the number of confirmed intraLATA PIC changes with Verizon. For the months of May 1999 through October 1999, Pacific Bell's numbers were: 2.92%, 16.16%, 15.94%, 18.65%, 11.24%, 14.08%, and 14.11%. Verizon's numbers for the same months were: 0.15%, 0.48%, 0.11%, 0.15%, 0.13%, 0.41%, and 0.31%.

These ratios support the allegation that Pacific Bell's winback program caused legitimate switches to be coded as LPIC disputes, and thus improperly caused AT&T to be billed for unauthorized switches when in fact the consumers had authorized the switch to AT&T.

F. Pacific Bell's Winback Marketing Program for Its IntraLATA Telephone Service in California

Pacific Bell stated that after it receives notification that a customer switched his or her local toll service to another carrier, a "winback" letter promoting Pacific Bell's service is sent to the customer that includes a toll free telephone number for one of Pacific Bell's Corporate Call Centers (CCC). "Winback" activity is handled by these CCCs, which handle calls from customers responding to the "winback" letter (or "inbound" calls) as well as calls by Pacific Bell telemarketing representatives to the customers (or "outbound" calls).

Pacific Bell indicated that a winback could be either authorized (in which the consumer stated that the previous switch away from Pacific Bell was with their authorization) or unauthorized (in which the consumer stated that the previous switch away from Pacific Bell was not with their authorization). Pacific Bell informs its telemarketing vendors of all business customers who have left Pacific Bell's local toll service. Pacific Bell's telemarketers then contact the business customers and read a prepared script that asks if the business customer authorized the change to AT&T's local toll service. If the customer states that the change was authorized, Pacific Bell's telemarketers explain the benefits and values of coming back to Pacific Bell's local toll service. If the business customer says the change was not authorized and wants to return to Pacific Bell, the telemarketer completes an order to return them to Pacific Bell's local toll service, and then sends the information to Pacific Bell's VCSC (Business Channel) where the order is coded as an unauthorized LPIC change (an LPIC dispute).

Pacific Bell states that there were instances in which winbacks were mistakenly classified as disputes, but that it does not know how many times this occurred. Pacific Bell states that it is aware of 4,114 winback business reply cards that were erroneously processed as AT&T LPIC disputes rather than as winbacks. Pacific Bell states that its policy is to classify a switch in service provider as a dispute only if the consumer indicates the switch was unauthorized.

Business Winback Calls By Pacific Bell from May 1999 to January 2000

	Outbound	Inbound Calls	Total
Various Business Centers	12,371	33,227	45,598
No Notes	N/A	N/A	6
Totals	12,371	33,227	45,604

G. Independent Third Party Verification

Pacific Bell obtained a letter of authorization (LOA) from business customers who return to their local toll service. Pacific Bell stated that for residential customers its current procedures require TPV on all "winback" customers returning to Pacific Bell's intraLATA toll service.

Pacific Bell stated that for the period May 1999 through October 1999 it used signed LOAs in lieu of confirmation by an independent third party verification company to confirm residential telephone subscribers' decisions to change their local toll telephone service to Pacific Bell.

Pacific Bell also stated that they did not always use third party verification when returning residential customers back to Pacific Bell's intraLATA toll service as part of its winback program regardless of whether the winback was classified as authorized or unauthorized. However, section 2889.5(a)(3) requires telephone companies to utilize an independent third party verification company to confirm the telephone subscriber's decision to change his or her telephone service[6].

Also, AT&T indicated that it did not record the third party verification for residential customers in the 1999 time period. AT&T also indicated that for some LPIC disputes, AT&T had a different customer of record (than did Pacific Bell) on its account for those telephone numbers. For other LPIC disputes, AT&T had no record of those customers, or no record of that phone number in their residential systems, or AT&T never received an LPIC dispute from Pacific Bell for this consumer.

Thus, staff's preliminary investigative findings indicate that both AT&T and Pacific Bell may have violated section 2889.5(a)(3) by failing to at all times to perform and record independent third-party verification of consumers' authorization to change telephone service providers.

IV. CONCLUSION

CSD recommends that the Commission not dismiss the formal complaint dockets, C.99-12-029 and C.00-02-027, in order to provide a forum to review and consider staff's preliminary findings and conduct further investigation. Staff's interviews with consumers demonstrate that 25 slams occurred, based on statements by consumers that the their telephone service provider was switched to AT&T without permission. Staff's interviews further demonstrate that Pacific Bell improperly coded complaints as LPIC disputes and charged AT&T for LPIC change fees, when in fact the consumer had authorized the switch to AT&T. Staff's review of Pacific Bell's documents and discovery responses indicate that Pacific Bell's "winback" program caused authorized switches to AT&T to be improperly coded as LPIC disputes. This problem is further demonstrated by the

[6] Effective January 1, 1999, section 2889.5(a)(3) states that for sales of residential telephone service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-party verification company. Section 2889.5(a)(3) goes on to provide requirements that telephone corporations must follow when utilizing third party verification. For the sales of nonresidential services, Section 2889.5(a)(3) allows telephone corporations to utilize four methods, including third party verification, to confirm the nonresidential subscriber's decision to change his or her telephone service.

disproportionate number of LPIC disputes reported by Pacific Bell attributable to AT&T, as compared to other jurisdictions. Therefore, CSD further recommends that the Commission retain the services of an outside auditor, to be paid for by reimbursement of the Commission's costs by Pacific Bell, to provide a detailed report regarding the accuracy of Pacific Bell's process of tracking and billing of LPIC disputes.

CONSUMER SERVICES DIVISION
AUGUST 7, 2001

TT01-1 -10

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER, SUITE 200
WASHINGTON, DC 20005

ORDER

June 25, 2001

TT01-1, IN THE MATTER OF THE APPLICATION OF VERIZON WASHINGTON DC, INC., FOR AUTHORITY TO AMEND THE GENERAL INDEX AND GENERAL REGULATIONS TARIFFS, P.S.C. – D.C., Order No. 12041

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants in part and denies in part the tariff amendment application filed by Verizon Washington DC, Inc. ("Verizon DC") in this proceeding. The Commission directs Verizon DC to resubmit its amended tariff pages, including proposed Section G5 and related cross-references, but excluding Section G6 and related cross-references, so that the Commission may publish a complete and legally correct Notice of Final Rulemaking in the *D.C. Register*.

I. BACKGROUND

2. On March 6, 2001, Verizon DC filed the tariff amendment application being considered in this proceeding ("Application") with the Commission.[1] Notice of this tariff amendment application was published in the *D.C. Register* on March 16, 2001.[2] In its Application, Verizon DC requests authority to amend the following pages:

GENERAL INDEX, INTRASTATE TARIFFS P.S.C. – D.C.
Index, 6th Revised Page 2
7th Revised Page 14
GENERAL REGULATIONS TARIFF P.S.C. – D.C. NO. 201
Contents, 2nd Revised Page 2
Section 1, 5th Revised Page 37
2nd Revised Page 38
Original Page 39

Verizon DC explains that these tariff amendments establish charges, terms and conditions under which a customer's local exchange service will be provided by Verizon DC after being switched from a competitive local exchange carrier ("CLEC"). The tariff

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1 TT01-1, In The Matter Of The Application Of Verizon Washington DC, Inc., For Authority To Amend The General Index And General Regulations Tariffs, P.S.C. – D.C., 201, Letter from J. Henry Ambrose, Vice President, Regulatory Matter, Verizon DC, to Jesse P. Clay, Jr., Commission Secretary, ("Verizon DC Application"), filed March 6, 2001.

2 48 D.C. Reg. 2354 (March 16, 2001).

RECEIVED AT&T
JUN 27 2001

18. For these reasons, the Commission is denying proposed Section G6. The Unauthorized Local Service Provider Change Charge violates the FCC anti-slamming rules, impedes competition, and has the potential to lead to double charges on CLECs. The Commission is cognizant of the concerns expressed by Ms. McCracken and Ms. Hughes, both of whom allege that they have been slammed several times and seek an end to slamming in the District of Columbia. However, Verizon DC's proposed tariff amendment might not deter slamming, so consumers in situations similar to Ms. McCracken and Ms. Hughes will not obtain the relief they desire from this Application.

III. CONCLUSION

19. The Commission grants Verizon DC's request to add a new Section G5 to page 37 of its general regulation tariff, permitting Verizon DC to assess a Change of Local Service Provider Charge to customers switching from another local service provider to Verizon DC. The Commission denies Verizon DC's request to add a new Unauthorized Local Service Provider Change Charge, because this charge violates FCC anti-slamming regulations.

20. Because the Commission grants in part and denies in part this tariff amendment application, the Commission directs Verizon DC to file an amended tariff amendment application including only the portions of the tariff that have been approved. Verizon DC is requested to provide this amended application within 10 days of the date of this Order, so that the Commission may submit expeditiously the appropriate Notice of Final Rulemaking to the *D.C. Register*.

THEREFORE, IT IS ORDERED THAT:

21. Verizon Washington DC, Inc.'s proposed Section G5 on the 5th Revised Page 37 of its tariff amendment application is **APPROVED**;

22. Verizon Washington DC, Inc.'s proposed Section G6 on the 5th Revised Page 37 of its tariff amendment application is **DENIED**;

23. Verizon DC is directed to submit a revised tariff amendment application including Section G5 and its related cross-references, and excluding Section G6 and its related cross-references within 10 days of the date of this Order; and

24. Section G5 and its related cross references shall become effective upon publication in the *D.C. Register*.

A TRUE COPY: BY DIRECTION OF THE COMMISSION:

Jesse P. Clay Jr.

CHIEF CLERK JESSE P. CLAY, JR.
COMMISSION SECRETARY

being switched from a competitive local exchange carrier ("CLEC"). The tariff amendments also establish terms and conditions under which Verizon DC will assess CLECs a charge for changing local service providers without the customer's consent (otherwise known as "slamming").[3]

3. On April 30, 2001, AT&T Communications of Washington, D.C., Inc. ("AT&T") filed comments in response to the Notice of Proposed Rulemaking.[4] Two consumers, Anna L. McCracken and Marija Hughes, filed letters with the Commission regarding this tariff application on May 3, 2001 and May 7, 2001, respectively.[5] No Reply Comments were filed.

II. DISCUSSION

4. Through its Application, Verizon DC seeks to implement two new charges. First, Verizon DC proposes a new charge for customers of other local exchange carriers that change their local exchange service to Verizon DC. Second, Verizon DC seeks to impose a charge on CLECs that Verizon DC deems to have slammed customers.

A. Change of Local Service Provider Charges

5. In Proposed Section G5, Verizon DC seeks to impose the same service connection charges and the terms and conditions normally associated with a request for new service on customers that switch from a local exchange carrier other than Verizon DC to Verizon DC. Verizon DC pledges that it will make every reasonable effort to ensure that there is no lapse in local exchange service during the transfer of a customer's service from a competing provider's service.[6]

6. No party filed comments on this aspect of Verizon DC's Application. It is reasonable that Verizon DC would seek to apply the service connection charges and the terms and conditions associated with new service orders to accounts for customers that switch from another local exchange carrier to Verizon DC. Customers switching from another provider to Verizon DC are no different than new customers. Verizon DC must perform the same activities for the switching customer as for a new customer. Verizon DC's proposals do not discriminate against customers that are switching from another

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3 Verizon DC Application, at 1.

4 TT01-1, In The Matter Of The Application Of Verizon Washington Dc, Inc., For Authority To Amend The General Index And General Regulations Tariffs, P.S.C. – D.C., 201, AT&T Communications of Washington, D.C., Inc.'s Comments on Verizon's Proposed Tariff Regarding its Unauthorized Local Service Provider Change Charge ("AT&T Comments"), filed April 30, 2001.

5 Letter from Anna L. McCracken to Jesse P. Clay, Jr., Commission Secretary, filed May 3, 2001 ("McCracken letter"); Letter from Marija Hughes to Jesse P. Clay, Jr., Commission Secretary, filed May 7, 2001 ("Hughes letter").

6 Verizon DC Application, Section 1, 5th Revised Page 37.

DC seeks to impose the charge before the Commission has adjudicated the slamming complaint.[28] This decision by Verizon DC is tantamount to having Verizon DC determine whether slamming has occurred. Verizon DC cannot make that decision because the FCC has designated the Commission, not the incumbent local exchange carrier, as the deciding entity.

15. While the FCC's regulations require Verizon DC to inform an alleged unauthorized provider if it receives a slamming complaint from a customer,[29] there is no language in the proposed tariff amendment indicating when Verizon DC will notify the alleged unauthorized service provider of the slamming complaint. This omission does not expressly contradict FCC rules, but without this language, Verizon DC's tariff provision could be interpreted in such a way as to not require Verizon DC to inform an alleged unauthorized provider of a slamming complaint, which would violate the FCC's anti-slamming rules.

16. Verizon DC proposes that if the Commission determines that a slamming has not occurred, the CLEC may recover "any nonrecurring charges assessed against the alleged unauthorized local service provider by Bell Atlantic – Washington, D.C., Inc." from the customer.[30] This provision means that the CLEC cannot recover the wrongfully charged Unauthorized Local Service Provider Change Charge from Verizon DC, which collected the charge; the CLEC must collect this charge from the customer. Verizon DC receives additional revenue, which it is not required to return, creating an incentive for Verizon DC to collect this charge as often as possible. Additionally, the CLEC sours, and possibly severs, its relationship with its customer by imposing an additional charge - assessed by Verizon DC, not the CLEC - on the customer. Imposition of this additional charge is anti-competitive, since it discourages customers from continuing to be served by CLECs after a slamming dispute. It provides additional revenue and an incentive to impose slamming charges for Verizon DC, which also deters competition.

17. AT&T alleges that Verizon DC's proposed tariff may, in practice, lead to double recovery of service connection charges. AT&T asserts that in some instances, it chooses to pay a customer's costs in returning to Verizon DC, even though AT&T has sufficient verification of the customer's change in service providers.[31] In these instances, AT&T would pay the service connection charges to the customer to be returned to Verizon DC as well as the unauthorized local service provider change charge assessed by Verizon DC on the CLEC. The Commission concurs with AT&T's arguments and is concerned about the possibility that CLECs may be charged double for the same incident.

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28 Proposed Section G6, 5th Revised Page 37.

29 47 C.F.R. § 64.1150(a).

30 Proposed Section G6, 5th Revised Page 37.

31 AT&T Comments at 7.

local exchange provider.[7] For these reasons, the Commission approves proposed Section G5, the Change of Local Service Provider Charge.

B. Unauthorized Local Service Provider Change Charges

1. Parties' Comments

7. Verizon DC also seeks to impose a discrete charge upon offending CLECs that switch a Verizon DC customer to their service without the customer's consent. Verizon DC's Application provides that if a customer alleges to Verizon DC that a change in local service providers is unauthorized, then Verizon DC will charge that carrier the service connection charges incurred to restore the customer to Verizon DC. The proposed amendment states that if an allegation of unauthorized changes is found to be invalid, then the vindicated CLEC may charge the customer any nonrecurring charges assessed against the CLEC by Verizon DC.[8]

8. AT&T opposes Verizon DC's proposed Unauthorized Local Service Provider Change Charge. AT&T asserts that Verizon DC has drafted the tariff amendment to allow it to impose this charge, without requiring that a customer inform the allegedly unauthorized provider or the Commission of the allegedly unauthorized change. AT&T protests the lack of any opportunity to be heard before the imposition of this charge.[9] AT&T contends that imposition of a charge against an allegedly unauthorized provider before a determination by this Commission or the Federal Communications Commission ("FCC") violates FCC anti-slamming rules.[10] AT&T further contends that the tariff language provides a disincentive for customers to file a slamming complaint, negating the CLEC's opportunity to prove that the change in service provider was authorized.[11] In addition, AT&T states that in some circumstances, a CLEC may choose to pay the costs to switch a customer alleging an unauthorized change back to Verizon DC without admitting liability. AT&T contends that under Verizon DC's tariff language, the CLEC would pay twice for the same incident: once to the customer to switch the customer to Verizon DC, and a second time to Verizon DC for the same costs.[12] Finally, AT&T alleges that Verizon DC's tariff amendment application impedes local competition and requests the Commission to reject it.[13]

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[7] D.C. Code Ann. § 43-402 requires that "[t]he charge made by any such public utility for any ... services ... rendered, shall be reasonable, just and nondiscriminatory."

[8] Verizon DC Application, Section 1, 5th Revised Page 37.

[9] AT&T Comments at 2.

[10] AT&T Comments at 3.

[11] AT&T Comments at 9.

[12] AT&T Comments at 7.

[13] AT&T Comments at 9-10.

Verizon DC must also refer the customer to the Commission for resolution of the complaint.[20] (If the customer complains first to the allegedly unauthorized service provider that a slam has occurred, this provider must also advise the customer to file a complaint with the Commission.)[21] When the Commission receives a slamming complaint, it must inform the alleged unauthorized provider of the existence of the complaint and order that all unpaid charges be removed from the customer's bill for the first thirty days after the change until the Commission has resolved the complaint.[22] The Commission would then investigate the slamming allegation and determine whether a slam has occurred.

12. If the Commission finds that a customer has been slammed, then the Commission may order different forms of restitution, depending on whether the customer has paid the unauthorized service provider and the timing of the complaint. If the customer has not paid the unauthorized provider, then the Commission may determine that the customer is entitled to absolution from the first 30 days of charges. Neither the authorized nor the unauthorized carrier may collect these charges from the subscriber.[23] If the customer has incurred charges for more than 30 days after the unauthorized change, the unauthorized carrier must forward the customer's billing information to the authorized carrier, which may bill the customer for the charges incurred after the initial 30-day period.[24]

13. If a customer has paid the unauthorized carrier some or all of the charges, then the Commission shall order the unauthorized carrier to send an amount equal to 150 percent of the charges paid by the customer and copies of all telephone bills sent to the customer to the authorized provider.[25] The authorized provider must give the customer a refund or credit of 50 percent of the charges paid by the customer to the unauthorized provider.[26] The authorized carrier retains the remainder of the payments received from the unauthorized provider. Additionally, the authorized carrier may collect reasonable billing and collection expenses in collecting charges from the unauthorized carrier.[27]

14. Many of the provisions in Verizon DC's proposed Unauthorized Local Service Provider Change Charges violate the FCC rules outlined above. First, Verizon

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20 47 C.F.R. § 64.1150(b).

21 47 C.F.R. § 64.1160(e).

22 47 C.F.R. § 64.1150(c).

23 47 C.F.R. § 64.1160(d).

24 47 C.F.R. § 64.1160(e).

25 47 C.F.R. § 64.1170(b).

26 47 C.F.R. § 64.1170(c).

27 47 C.F.R. § 64.1170(d).

9. The two consumers filing letters with the Commission on this tariff amendment application support Verizon DC's Unauthorized Local Service Provider Change Charge. Both consumers allege that they have been slammed several times. They predict that Verizon DC's charge will reduce the amount of slamming incidents. Additionally, Ms. McCracken supports Verizon DC's intent to have the CLEC, not the consumer, pay the service connection charges that the consumer incurs because of an unauthorized change in local providers.[14] Ms. Hughes also supports the Unauthorized Local Service Provider Change Charges, particularly if these charges are retroactively applied.[15]

2. Discussion

10. The FCC has developed comprehensive anti-slamming rules that apply equally to local exchange, intra-LATA toll, and inter-LATA toll slamming.[16] These rules establish standards for determining when slamming has occurred, including requiring service providers to obtain and retain specific verification information from customers desiring to change providers. The FCC indicates that its rules establish minimum verification procedures, but states can create additional verification procedures if local circumstances warrant.[17] State commissions have the authority to adjudicate slamming disputes arising under these rules.[18]

11. The FCC rules establish procedures for pursuing a slamming complaint against an allegedly unauthorized service provider. If a customer informs Verizon DC that a change in local service provider is unauthorized, then Verizon DC must inform the alleged unauthorized carrier, and any carrier authorized by the customer as the customer's local service provider, if different than Verizon DC.[19] Under the FCC's rules,

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14 McCracken letter at 1.

15 Hughes letter at 1.

16 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996* and *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1557, ¶ 81 (1998) ("*Section 258 Order*"), *stayed in part*, *MCIWorldcom v FCC*, No. 99-1125 (D.C. Cir. May 18, 1999), *motion to dissolve stay granted*, *MCIWorldcom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000).

17 *Section 258 Order* at 1561, ¶ 87. The Commission has not yet developed any additional slamming rules.

18 *Section 258 Order* at 1563, ¶ 90; 47 C.F.R. § 64.1120(a); 47 C.F.R. § 64.1110. In the *Section 258 Order*, and 47 C.F.R. § 64.1120(a), the FCC indicates that state commissions have the authority to enforce the FCC's slamming rules for intrastate slamming. The FCC also provided that state commissions may elect to enforce the FCC's rules for interstate slamming pursuant to 47 C.F.R. § 64.1110. This Commission has elected to do so.

19 47 C.F.R. § 64.1150(a).

PIC and CARE Administration

Industry Problems in Search of Simple Solutions

The primary driver for competition in the U.S. over the course of the past 17 years has been to give consumers and businesses the ability to choose their service providers and, once having chosen, to change their minds and to 'move' to a new provider. This happened first in 1984 for long distance for both wireline business and residential consumers, then again in 1996, for local service for wireline business customers and will happen for wireless subscribers beginning next year in November 2002.

This freedom to choose has resulted in many benefits. Customers can reduce their telecommunications costs by price shopping for carriers; improve the quality of their services or the variety of services available to them by changing carriers. It has also stimulated carriers to roll out new products and services that they may not have done otherwise, to differentiate themselves in order to attract new customers.

To enable these freedoms, laws and regulations had to be enacted to remove barriers to change. In 1984, to enable choice in long distance carriers, both local and long distance providers were required to make changes in how switches were provisioned and how information about customers' preferred inter-exchange carrier (PIC) choices are collected and managed. In 1996, to enable choice in local carriers, local and long distance providers were required to make even more sweeping changes– to their networks, to the manner in which they interconnected with each other and to how they did business with each other.

The focus of this paper is how changes to the business relationships between carriers have created big problems for customers and carriers alike. We'll examine these impacts, below, and then discuss several promising, highly achievable solutions.

The Problem with PIC Administration

In 1984, at the time of divestiture, it was determined that incumbent local exchange carriers would be responsible for administering the customer's choice of preferred inter-exchange carrier (PIC). The incumbents were a natural choice for this job—they were prohibited from providing long distance service and therefore had no incentive to mis-manage PIC. This arrangement worked well for years. But the entry of incumbents into long distance as they receive "271" approvals has introduced several factors that have and will continue to cause this arrangement to break down.

Customer Impacts Resulting from PIC Administration Problems

- "Slamming," which happens when a new long distance carrier changes the customer's choice of PIC without asking the customer. This problem continues to plague the industry.
- Problems with PIC Freeze—the local carrier automatically freezes the customer's PIC without his/her knowledge, making it difficult for the customer to change carriers
- "Cramming" or "soft slam," which happens when both the old and new carriers bill the customer

- Cumbersome and complex processes to solve billing problems resulting from mismanagement of PIC. Customers are often confused when trying to decide which carrier—local or long distance, old or new—to call in order to resolve a billing problem. If they choose the wrong carrier, the problem can take days or even weeks to solve.

Although all of these problems occur all too frequently, "slamming" and PIC Freeze problems can be expected to worsen as the incumbent Bell companies—formerly considered neutral parties suitable to collect and administer PIC information from customers—are being given authority to compete for long distance customers. The incumbent Bells were moderately successful in helping to prevent "slamming" in the past. Now, as they compete with long distance companies to win customers, they have no incentive to act in a neutral manner to administer customer PIC information.

Carrier Impacts Resulting From Problems with PIC Administration

To get new business and to "mine" that business for sustainable revenues, competitive carriers rely on the ability of the customer to freely change carriers. In the current environment, that's sometimes difficult for customers to understand or manage.

- The local carrier can freeze the customer's PIC without his/her knowledge. So, the customer may inform the new inter-exchange carrier that they wish to move, but the move doesn't actually take place because of the PIC freeze.
- If the customer's PIC change is not made in a timely fashion, the old carrier may continue to bill the customer at the same time the new carrier is sending bills. Billing problems resulting from this mismanagement are difficult and time-consuming to solve. This frustrates the customer and often results in the customer mistrusting the new and/or the old carrier and in being more reluctant to change carriers in the future.

Neutral PIC Administration

A Simple, Highly Achievable Solution

Competition may have caused these problems, but we do not have to sacrifice competition to solve them. Further, if an acceptable solution is not found, these problems will actually serve as a barrier to competition. If customers are unable to move freely between carriers and carriers see their addressable market shrinking as a result, then competition and the customer lose. Fortunately, an achievable solution exists that will greatly improve the PIC administration process while preserving the competitive environment that consumer groups and regulators have fought so hard and so long to create.

An Unbiased PIC Administrator

In an environment where once-neutral incumbent local carriers have now been granted the freedom to compete for long distance customers, the next logical step is to transfer administration of the customer's choice of carrier to an unbiased PIC administrator. For years, incumbent local carriers were the reasonable choice for the administration of PIC. Although their efforts to prevent "slamming" have been only moderately successful, they have otherwise done well in that capacity. They have also greatly benefited: Bell companies enjoy a healthy revenue stream from PIC administration by operating Inter-exchange Customer Service Centers, or ICSCs, and charging both carriers and consumers for their services. But now that they are competing for the right to be the customer's preferred inter-exchange carrier, Bell companies are no longer the right choice to administer PIC. The best solution to serve the consumer is to have this work performed by an unbiased, non-competitive PIC administrator.

By definition, an unbiased administration service is not owned or operated by any telecommunications service provider, and carriers may not influence it so that it would favor one carrier or group of carriers over another. Its priority is to serve the customer and to ensure that customer PIC information flows correctly and promptly between carriers. By keeping historical records on customer PIC information, an unbiased administrator could help regulators to mediate disputes between carriers and between carriers and customers. Regulators could track the behavior of industry participants with near real time data. This is the best way to finally put an end to "slamming," "cramming," and customer billing frustrations caused by problems with PIC administration.

This is a simple idea – the movement of PIC administration from the incumbent to a neutral party-- and, as Bell companies receive "271" approval in jurisdiction after jurisdiction, it's an idea whose time has come.

The Problem with CARE Administration

In the early days of long distance competition, an industry record specification called CARE, the Customer Account Record Exchange, was developed to facilitate the exchange of customer account information between long distance companies and local service providers – then, the incumbent telephone companies (the Bells and the Independents). The CARE record includes name, billing and service address information, service profile, customer PIC and reseller information.

CARE exchange between local and long distance carriers worked well for years, but today, with the proliferation of carriers and resellers in the marketplace, CARE exchange often breaks down.

Customer Impacts Resulting From Problems with CARE Administration

- CARE record quality has degraded significantly. Many new local carriers have entered the market and are unfamiliar with CARE practices. Records are either slow to be sent, sent in a format that does not meet the industry standard, or not sent at all. When this happens...
- CARE isn't processed in a timely basis, resulting in customer billing problems that are time consuming and difficult to solve.
- Service problems and service interruptions are all too frequent when customers exercise their right to change carriers because the new carrier isn't brought into the 'information loop' through the prompt receipt of a CARE record, or the old carrier isn't notified promptly that the customer has moved.

Carrier Impacts Resulting From Problems with CARE Administration

A Billion Dollar Problem

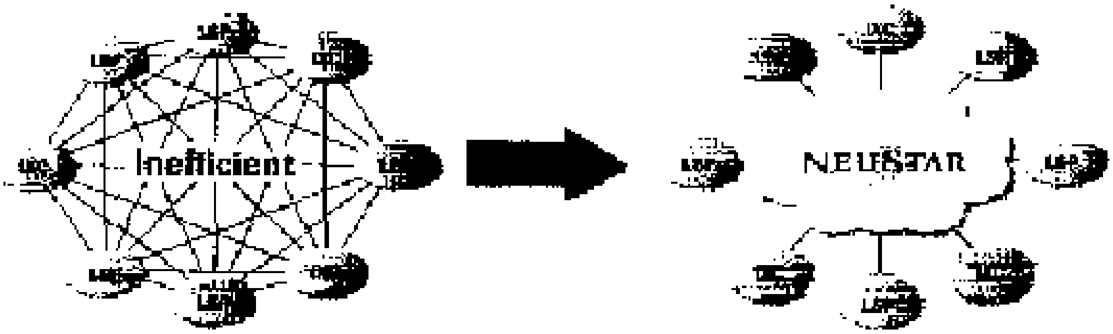
Carriers are also hurt by the failure of information exchange. When Bell companies and competitive local carriers resell their network services, the name of the reseller or UNE-P provider is rarely available to the long distance carrier. This is especially hurtful to carriers that have "casual calling" products that allow customers who do not need to pre-subscribe to dial a special string of digits (10-10-XXX) to access the carrier's network. These casual calling products are very popular among customers and represent a significant source of revenue—sometimes the majority of revenue—for many long distance companies. If these companies are unable to identify a customer who is accessing their network, they cannot bill for the call. Worse, they may inadvertently block calls from a customer who is willing to pay for making the call.

Estimates published by ATIS, the Alliance for Telecommunications Industry Solutions, reveal that one billion dollars annually is lost in revenue, missed opportunities to earn revenue, and operating cost increases. These revenue losses relate to billing problems that stem from the lack of reseller information that should be exchanged between local and long distance carriers. These losses are expected to increase every year.

Today, national long distance carriers and billing companies suffer most of these losses, but in the future, as more and more competitors enter the market, the problem will become even more prevalent. How can these problems be solved?

Central CARE Administration

Carriers have in their own networks solved a problem that is similar to the one presented by CARE. Hundreds of facilities-based carriers connect their signaling networks through hubs, or aggregation points, in order to reduce the costs of interconnection and ensure that calls are routed to the correct destination. This concept can easily be envisioned for CARE exchange; instead of all carriers connecting to one another to exchange information, they can connect their systems to a central service point—a CARE aggregation center. The simplicity of such a center can be seen in the diagram below.



If such a simple model exists, a simple question remains – why haven't carriers already adopted a central model for CARE, wherein customer information is available to carriers authorized by the customer to provide service? The answer lies, again, in problems with competition. Retention of customer information is important to carriers. Some carriers are reluctant to solve the problem.

because the provider that controls customer information also has control over a customer's business. In such a case, it can become very difficult for another provider to compete for that business.

In today's telecommunications environment, where a large number of carriers compete for customers, the best and simplest solution is to centralize CARE administration. Managing CARE from a central service point ensures the timeliness and accuracy of the information exchanged between providers, and assigning a neutral, unbiased provider that is unaligned with any carrier or group of carriers prevents further abuses of the process. Both customers and carriers win.

What Can Regulators do About PIC and CARE Problems?

A number of state regulatory bodies as well as NARUC are struggling with customer and/or carrier complaints on issues relating to CARE and PIC problems. Some have even formed working groups to focus on finding solutions (New York and the New England states, i.e., NECPUC). More states need to give these problems the attention they deserve. Carriers used to doing things 'the old way' need to be urged by regulators to adopt the "single aggregation point" solutions.

NeuStar, Inc., a trusted, neutral administrator of industry-wide services such as the North American Numbering Plan (NANP) and the Number Portability Administration Center, the NPAC, has designed both PIC and CARE administration solutions that can be implemented on a statewide basis within one year to 18 months. For states wishing to 'prove the concept,' both solutions can be deployed on a trial basis within six months. If deemed to be successful, the trial solutions can then be migrated into long-term solutions. NeuStar welcomes interest from state regulators and we are prepared to support the dialogue with concrete information about near-term, highly achievable solutions.

Conclusion

In today's telecommunications environment, where a large number of carriers compete for customers, it makes sense to centralize PIC and CARE administration. Managing PIC and CARE from a central service point ensures the timeliness and accuracy of the information exchanged between providers, and assigning a provider that is unaligned with any carrier or group of carriers prevents further abuses of the process. *Both customers and carriers win.*

Unbiased PIC administration and central CARE administration are achievable, near-term solutions. With the help of regulators who can encourage the participation by carriers, these solutions can go a long way toward making competition succeed.